between the parties to the litigation as it is a contest between the party defending his right to a particular trade mark and the public, and the duty of the court must always be to protect the public irrespective of what hardship or inconvenience it may cause to a particular party whose trade mark is likely to deceive or cause confusion. (*Ciba Ltd.* v. *M. Ramalingam & S. Subramaniam.*[1])

The public do know whose goods they are buying in the present case. They know they are buying sweetened condensed milk manufactured in the Netherlands and imported by Soo Seng & Co., Penang, because it says so on the label which contains the trade mark. The applicants have nowhere pleaded that the public are being deceived into thinking that they are buying any other sweetened condensed milk by reason of the close resemblance of this trade mark to any other trade mark applicable to sweetened condensed milk. The label which contains the trade mark informs the public that the importer of the milk is the respondent's firm, Soo Seng & Co. and so it is. The agreement of the 3rd November, 1961, refers to the development throughout the said area of the sale of the said sweetened condensed milk to be supplied by the said manufacturers under the "Saint Brand" trade mark. That is to say it is an agreement as to distribution and sale and not as to importation. Does the fact that it is not mentioned anywhere that the respondent has partners on the distribution and sale side of the business lead to the public being deceived? I cannot see that it does in any way.

In my opinion this is not a proper case in which an order should be made for rectification or variation of the register of trade marks and accordingly the motion is dismissed with costs.

Motion dismissed.

Solicitors: *V. K. Palasuntharam; Lim, Lim & Oon.*

HAJI HUSSEIN & ORS. v. THE GOVERNMENT OF THE STATE OF KEDAH & PUTEH BIN HAJI MAN

[O.C.J. (Suffian J.) December 15, 1963]

[Alor Star — Civil Suit No. 99 of 1962]

Land Laws—Arrears of quit rent water and education rates—Land auctioned by State Government—Service of notices on registered proprietors who have long since been dead—No letters of administration granted—Non compliance with statutory requirements as to service—Whether sale irregular—Substantial injury to beneficiaries of deceased proprietors—Kedah Enactment No. 56 (Land), ss.41, 113, 150 to 153, 155, 158, 159, 161, 164 & 188.

Administration—Death of registered proprietors—No letters of administration granted—Vesting of properties in Chief Justice—Probate and Administration Ordinance, 1959, s.39(1).

The first defendant auctioned two pieces of land worth about $50,000 for arrears of quit rent, water and education rates totalling $140.35 and the lands were sold at the auction for $245. These lands were each registered in the names of three proprietors all of whom had since died. The plaintiffs, four out of some eleven beneficiaries to the said lands, applied to the court to declare that the sales were null and void on the ground that the sales were irregular and that the plaintiffs had sustained substantial injury by reason of the irregularities. Counsel for the plaintiffs submitted that (i) the registered proprietors had died and therefore the lands could not be compulsorily sold for arrears of rent, there being no person on whom the statutory notices could have been served in accordance with the law; (ii) alternatively even if service of the statutory notices had been possible the land officer should have served notices in the form of Schedule XXXI; (iii) service of the notices in the form of Schedule XXXII was insufficient, there being no proper affixing of a copy at the mosque nor at the land and that the notices if served at all were served only once and should have been served again after each postponement of the auction; and (iv) the notices in the form of Schedule XXXIII though issued on June 14, 1961 were not in fact posted at the Land Office until July 21, 1961 and therefore were contrary to section 153(2) which specified the date of the action within less than 60 days of the date of the issue and posting of the notices. It was argued for the first defendant that (a) they had strictly complied with the statutory requirements; (b) the plaintiffs knew of the auction; (c) failure to serve the notices did not invalidate the sales because of section 153(3) of the Enactment; and (d) the plaintiffs' suit was statute barred by virtue of section 164(2) of the Enactment. The second defendant joined the first defendant in pleading limitation and also that he was the *bona fide* purchaser for value.

Held: (1) the death of the registered proprietors did not disable the land officer from serving the statutory notice as provided in rule 42(iv) as a prelude to auctioning the land for arrears of rent. The words "in which the noticee is known to have last resided" do not restrict the application of rule 42(iv) to cases where the registered proprietor is still living;

(2) sections 158, 159 and 161 impose a duty on the land officer to sign the memoranda of transfers and to cause the same to be registered upon the highest bidder paying the purchase price by the due date and the sale becoming final and notwithstanding the death of the registered proprietors and the absence of an administrator the appearance of the second defendant's name on the register as proprietor of the lands was lawful;

(3) the ommission by the land officer of the service of notices in the form of Schedule XXXI was not fatal to the sale;

(4) notices in the form of Schedule XXXII were properly served in respect of each land by the Land Office notice server by affixing a copy thereof on each land and by affixing another copy in a conspicuous place in the mosque in the mukim in which the lands were situate;

(5) as the notices in the form of Schedule XXXIII were issued on June 14, 1961, a copy posted at the Land Office on June 18, 1961 and at the house of the penghulu of the mukim on July 4, 1961 the date of auction (i.e. September 9, 1961) specified in the notice was not less than 60 days from the date of both issues and posting. The words "and post" immediately following the words "issue" when it first appears in section 153(1), are absent when the word "issue" appears a second time and from this it would appear that the specified date of auction must be not less than 60 days from the date of issue of the notice but it may be less than 60 days from the date of its posting;

(6) the omission of the land officer to cause service of further notices in the form of Schedules XXXII and XXXIII notifying the dates to which the auction was

postponed successively did not constitute a flaw because section 135 of the Land Enactment confers a discretion on the land officer to postpone such sale and in this case the new dates had in fact been announced in public by the bailiff each time the sale was postponed.

Quare: Whether *Tham Hing Kwai* v. *State of Negri Sembilan* (2) is still good law.

Cases referred to:—

(1) *Deverall* v. *Grant Advertising Inc.* [1954] 3 All E.R. 389, 396.

(2) *Tham Hing Kwai* v. *State of Negri Sembilan & 3 Ors.* [1931 - 32] F.M.S. L.R. 263.

CIVIL SUIT.

Zahir bin Ismail for the plaintiffs.

Hamzah bin Dato' Abu Samah, State Legal Adviser, for the 1st defendant.

M. Abraham for the 2nd defendant.

Cur. Adv. Vult.

Suffian J.: The Government of the State of Kedah, the first defendant, auctioned under Chapter XVII of the Land Enactment, two pieces of land held in S.P.K. 7573 and S.P.K. 7587 in the Mukim of Padang Lalang for arrears of quit rent, water rates and education rates totalling $140.35 and the four plaintiffs ask the court to declare that the sales were null and void on the ground (statement of claim para 10) that "the sales were irregular, there being no proper service of the notice and no proper notices" and (para 3) "the plaintiffs have sustained substantial injury by reason of the irregularities." The court has power to so declare under section 164(1) of the Land Enactment which reads —

"No sale for an arrear shall be annulled by any court except upon the ground of its having been made contrary to the provisions of this Enactment, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of.... "

The Government say that (a) they have strictly complied with the law before and in auctioning these lands, (b) they have gone further by ensuring that the plaintiffs knew of the auction proposed to be held on the first occasion, (c) in any event, no failure to serve or irregularity in serving any notice of sale shall invalidate the sales, sub-section (3) of section 153 [1] of the Enactment and (d) the plaintiff's suit is statute-barred, having been brought on August 12, 1962, i.e. after the expiration of three months after the registration of the transfers to the second defendant by the land officer on December 23, 1961, sub-section (2) of section 164.[2]

The second defendant, to whom the lands were knocked down, joins the Government in pleading limitation and also pleads that he is a *bona fide* purchaser for value.

There is no doubt that the plaintiffs have sustained substantial injury by reason of the sale, for the lands, first class bendang about 50 relongs in area, were worth $50,000 and they were knocked down for only $245. Therefore, apart from the effect of sub-section (3) of section 153 and the question of limitation, the only issue here is, were there irregularities or, specifically, were such statutory notices as were required to be served, issued and posted, were they served, issued and posted in the manner required by law.

The two lands originally belonged to the plaintiffs' grandfather. After his death the first land (S.P.K. 7573) was transmitted to three of his sons and the second (S.P.K. 8586) to two of those three sons and to another son. All these four sons died but the lands remained registered in their names, no administration of the estates was granted to anybody and the lands were occupied or worked by their beneficiaries (including the four plaintiffs), some 11 in number. In 1961 the land officer, Kota Star, in whose jurisdiction the lands lie, found, and it is not disputed, that the registered proprietors were in arrears with quit rent, water rates and education rates.

With reference to section 151,[3] the Land Officer admitted that he never caused to be served a notice in the form of Schedule XXXI.

With reference to section 152,[4] it must be noted that two pieces of lands were involved and each piece was registered in the names of three proprietors. Consequently on June 8, 1961, in respect of the first piece of land (S.P.K. 7573) three separate notices in the form Schedule XXXII were prepared (of which D-1, D-3 and D-4 are copies), each addressed to a different named registered proprietor "and two others." In respect of the second land (S.P.K. 8587), on the same day again three separate notices in the form Schedule XXXII were prepared (of which D2, D-5 and D-6 are copies) each addressed to a different named proprietor "and two others". So each registered proprietor was mentioned by name in the statutory notices.

On June 20, 1961, Jalil, the Land Office notice server, went out to serve these notices on the defaulting proprietors. When he got there he met Haji Hussein, the first plaintiff and his younger brother Haji Abdul Rani, both sons and beneficiaries of one of the four registered proprietors. They told Jalil that all the registered proprietors had died. He went back to the Land Office where the land officer instructed him to effect substituted service in the manner provided by paragraph (iv) of Land Rule 42.[5]

Accordingly he went out again on July 5, 1961 with these six notices. In respect of the

1. See p. 34 *l* I.
2. See p. 34 *r* F.
3. See p. 32 *r* D.
4. See p. 33 *l* A-B.
5. See p. 31 *l* G *et seq.*

first land, he affixed a copy of the relevant notice on a pole which he stuck on the land and he clipped another copy on a pillar in the middle of a mosque in the mukim in which the land is situate. In addition to this, he served a copy of D-3 on Abu Bakar bin Awang and a copy of D-4 on Haji Abdul Rani bin Awang Musa, the first plaintiff's brother and on July 12, 1961, he served a copy of D-1 on Haji Hussein, the first plaintiff.

As regards the second land, July 5, 1961, Jalil affixed a copy of the relevant notice on a pole which he stuck on the land and he clipped another copy on a pillar in the middle of a mosque in the mukim in which the land is situate. In addition to this Jalil served a copy of D-2 on the first plaintiff, a copy of D-5 and a copy of D-6 on Haji Abdul Rani bin Awang Musa, the first plaintiff's younger brother.

Jalil recorded the fact of service at the back of each of these notices D-1 to D-6 which he returned to the Land Office files.

The notices D-1, D-3 and D-4 stated that there were arrears totalling $72.80 due in respect of the first land and that if the arrears as well as the cost of the notices ($6) were not paid the land would be auctioned at the Land Office, Kota Star on September 16, 1961.

The notices D-2, D-5 and D-6 stated that there were arrears totalling $67.55 in respect of the second land and that if the arrears and the cost of the notices ($6) were not paid the land would be auctioned at the Land Office, Kota Star, September 16, 1961.

It will be observed that the date of sale appointed by the notices was not less than 60 days from the date of service.

I disagree with Che Zahir's submission that on the evidence the notices were not affixed on the land and at the mosque.

With regard to section 153,[6] a notice in the form of Schedule XXXIII was issued on June 14, 1961, six days after the issue of the notices D-1 to D-6. It is one of the documents attached to the three documents comprising exhibit D-7 and specified that in respect of these two lands there were arrears due and gave notice that the lands would be sold by auction for the recovery of arrears and costs at 10.00 a.m. on September 16, 1961, that is to say, not less than 60 days from the date of its issue. I find that this notice was posted at the Land Office on June 18, 1961 as stated by Jalil in his evidence and as recorded by him in the form (Land 196) attached to exhibit D-7. On this I accept his evidence, though I agree with Che Zahir that originally the act of posting was recorded on the front pages of the Land Office files, exhibits P-8 and P-9, as having been done on July 21, 1961. The dates on P-8 and P-9 were recorded by the bailiff on information given to him by Jalil who actually posted the notice. The bailiff made a mistake in his records and corrected it when he discovered his error. There were many lands to be put up for sale and in the confusion he made this mistakes; it is obvious from his demeanour that he is not a very intelligent person.

Copies of the notice in the form of Schedule XXXIII were on July 4, 1961 posted at the house of the Penghulu, Ayer Janggus, at a shop in Alor Janggus and at the mosque at Kubang Siam.

The arrears were never paid.

On September 16, 1961, the date appointed for the auction, the lands were put up for auction but there were no bids. It was then announced in public that day that the auction was postponed to November 11,1961.

The first plaintiff then went to see the land officer DW1 and asked for a further postponement saying that he had no money to pay as he had made use of it and he was unable to pay. The land officer agreed to a postponement. On November 11, 1961, again the lands were put up for auction and Che Puteh, the second defendant, who happened to be nearby heard the ringing of a bell and on enquiry was told that lands were being auctioned by Government for arrears of rent. He made a bid. The lands were withdrawn from the auction because the first plaintiff had asked for a further postponement and it was publicly announced that the lands would be auctioned on December 4, 1961.

Each time the sale was postponed no fresh notices in the form of Schedule XXXII and XXXIII were ever issued by the land officer notifying the new dates.

On December 4, 1961 the lands were again put up for auction and they were knocked down to Che Puteh for $245.

Che Puteh paid the purchase money by the due date, the land officer signed the necessary memoranda of transfers to him under section 161(1)[7] and the transfers were registered on December 23, 1961.

Che Zahir says that there were irregularities for four reasons. First, because the registered proprietors had died and so it was impossible for the lands to be compulsorily sold for arrears of rent, there being no person on whom the statutory notices could have been served in accordance with law, and he quoted the various provisions to which I shall refer below when I come to dispose of this argument. Alternatively, Che Zahir argues that even if service of the statutory notices had been possible after the death of the registered proprietors, then (a) the land officer

6. See p. 33 *I* B-D.

7. See p. 32 *I* E-G.

should have caused and he did not cause to be served a notice in the form of Schedule XXXI; (b) the service of the notice in the form of Schedule XXXII was insufficient, there being no proper affixing of a copy at the mosque nor at the land, the notice if served at all was served only once and should have been served again after each postponement of the auction; (c) the notice in the form of Schedule XXXIII, though issued on June 14, 1961, was not in fact posted at the Land Office until July 21, 1961, and, contrary to sub-section (2) of section 153, specified the date of the auction within less than sixty days of the date of the issue *and* posting thereof, and, in any event, fresh notices in this form should have been issued and posted after each postponement of the auction.

As regards the first argument, it is no doubt true that each of the four registered proprietors died intestate and therefore certainly after the passage of section 39(1) of the Probate and Administration Ordinance No. 35 of 1959 the lands vested in the Chief Justice because no administration had been granted to anybody. It is equally true that under section 41* of the Land Enactment the liability for payment of the quit rent lay on the deceased registered proprietors and they and only they became "defaulters" when quit rent was not paid; subsection (1) of section 150 [8] makes this plain. But I regret that I do not agree that where a registered proprietor died and nobody has been granted administration it is impossible for the land officer to effect service of the statutory notice before selling his lands for arrears of rent and the land officer's remedy is himself to apply for and obtain letters of administration as a creditor.

Section 188† says that service of notices may be effected in the manner prescribed by rules and rule 42 which reads:—

"42. Service of any notice under the provisions of the Enactment or of any rule made thereunder may be effected on the person to be served, hereinafter called the noticee as follows:—

(i) Service of the notice shall be made by delivering to the noticee or any agent of the noticee empowered to accept service on his behalf a copy of the notice, or if the address in Malaya of the noticee or his agent be known and there is postal communication therewith, by sending a copy of the notice by registered post to the noticee or his agent at such address.

(ii) When the serving officer cannot find the noticee or any agent empowered to accept service on his behalf, service of the notice may be made by delivering a copy of the notice to any adult member of the family of the noticee residing with him.

(iii) When the serving officer delivers a copy of the notice to the noticee personally or to his agent or an adult member of his family he shall require the person to whom the copy is so delivered to sign or thumb mark an acknowledgment of service on the original notice or in a book to be kept for the purpose.

(iv) If the person to whom such copy is delivered refuses or is unable to sign such acknowledgment or if the serving officer is unable to find the noticee or his agent or any adult member of his family residing with him, to whom the notice can be delivered, the notice may be served by affixing a copy thereof on the land (if any) concerned, and also by affixing a copy thereof in some conspicuous place on the mosque, penghulu's house, market or other place of common resort in the town or kampong in which the noticee is known to have last resided, or in the mukim in which the land, if any, concerned is situated, or in such other manner as the Director may order in writing.

(v) The serving officer shall endorse upon the original notice or enter in a book to be kept for the purpose a statement of the time, place and manner of service of any notice served by him and shall sign such endorsement or entry.

(vi) The officer issuing the notice may require the serving officer to make affirmation of the truth of any such endorsement or entry.

(vii) 'Copy' for the purpose of this rule means a true copy authenticated by the signature or seal of the issuing officer.

(viii) (not applicable)"

in my view clearly provides by its paragraph (iv) that if the serving officer is unable to find the defaulting proprietor or his agent or any adult member of his family residing with him (which is of course the case where the defaulting proprietor has died and nobdy has been appointed administrator) then the requisite notice may be served in the manner prescribed therein. I do not agree with Che Zahir that the words "in which the noticee is known to have last resided" restrict the application of this paragraph to cases where the registered proprietor is still living. True that sub-section (ii)(b) of section 204 of the F.M.S. Land Code expressly empowers the Ruler in Council of each of those States to make rules providing

"that no notice of sale need be served in any case where the proprietor of any land is dead or cannot be found."

But in my opinion the language of section 188 of the Kedah Land Enactment, even when contrasted with the above, in no way restricts the power of the Ruler in Council of the State of Kedah to the making of rules prescribing the mode of service of notices only to living proprietors.

It is also true that in the ordinary way the purpose of substituted service is to ensure that a writ thus served is likely to reach the defendant or to come to his knowledge, but the case cited in support of this (*Deverall* v. *Grant Advertising, Inc.*[1]) is a decision on the English Companies Act, 1948; whereas here we are dealing with express provisions in the Kedah Land Enactment.

8. See p. 32 *r* B-D.

* *Section 41:* In every document of title to land there shall be implied the obligations that the proprietor will duly pay the rent reserved in respect of such land, will preserve all boundary marks and maintain and keep clear all boundary lines, and will give immediate notice to the Land Officer if any boundary mark is injured, destroyed or removed.

† *Section 188:* Service of notices and other processes under this Enactment or of any rules made thereunder may be effected in the manner prescribed by rule under this Enactment.

I am therefore of the opinion that the death of the registered proprietors of these lands did not disable the land officer from serving the statutory notice as a prelude to auctioning the lands for rent arrears.

As regards the rest of Che Zahir's argument under this head, it is true that after the proprietors' death and in the absence of an administrator there was by virtue of section 113‡ of the Land Enactment no one capable of transferring the lands but I regret that I do not agree that the purported transfers of these lands to the successful bidder was ineffective to pass title to him. I am of the opinion that subsequent to the sale and payment of the purchase price by Che Puteh, the special provisions in sections 158, 159 and 161 spring into play and supersede section 113.

Section 158 reads:—

"The person who shall be declared the purchaser of any land at any public auction as aforesaid shall be required forthwith to deposit in cash twenty-five per centum of the amount of his bid...."

Section 159(1) reads:—

"The balance of the purchase money shall be paid by the purchaser before the close of business of the fourteenth day from the day on which the sale to him took place, and thereupon the sale shall become final."

Then section 161 provides:—

"(1) Upon a sale becoming final, the Land Officer shall sign a Memorandum of Transfer in the form of Schedule XXXIV and shall cause the same to be registered. Registration of such transfer shall be free of any fee and shall have the effect of transferring to the purchaser the land so sold free of all encumbrance created by or derived from the defaulter or his predecessor in title, except such as may have been expressly reserved by the Land Officer at the time of the sale.

(2) Such Memorandum of Transfer shall be registered notwithstanding that the issue document of title is not produced."

In my view the Enactment plainly imposes a duty on the land officer to sign these memoranda of transfers and to cause the same to be registered upon Che Puteh paying the purchase price by the due date and the sale becoming final, and, notwithstanding the death of the registered proprietors and the absence of an administrator, the second defendant's appearance on the register as the proprietor of these two lands was lawful.

‡ *Section 113:* When a proprietor of any land or a chargee or lessee shall die or be declared mentally disordered or become otherwise under disability the proper registering authority shall not register any dealing with such land, charge or lease respectively presented subsequent to such death or disability until the representative of such proprietor, chargee or lessee shall have presented an application to be registered as proprietor, chargee or lessee, together with the issue document of title and the original and a certified copy of the certificate of representation, and thereupon the proper registering authority shall make upon the register and issue documents of title, and in the case of a chargee or lessee upon the Memorandum of Charge or Lease, a memorial of the date of the certificate of representation and of the date of death, where that has occurred, of such proprietor, chargee or lessee and shall register as proprietor, chargee or lessee the person to whom such certificate of representation was granted with the addition of the words "as representative"; provided that before registering any person as representative of any deceased person the proper registering authority shall satisfy himself that estate duty has been paid or postponement of payment allowed.

As regards Che Zahir's alternative argument, (a) my view is that the admitted omission by the land officer of the service of notices in the form of Schedule XXXI was not fatal to the sale.

Section 150 reads:—

"(1) Subject to the provisions of sub-section (2) any rent not paid to the Land Officer before the first day of Rabialakhir in any year shall become an 'arrear'; and any other form of land revenue not paid within 30 days after the date of the service of a notice in writing by the Land Officer on the person liable to pay the same demanding the payment thereof shall become an 'arrear'. Every person liable to pay an arrear shall be a 'defaulter'.

(2) (not applicable)

(3) For the purpose of this section 'Rent' shall include all annual payments, and 'any other form of land revenue' shall include all other payments, which are in any other Enactments expressed to be recoverable in the manner provided for the recovery of rent or land revenue."

Section 151 reads:—

"(1) In order to recover an arrear other than a rent arrear the Land Officer may cause to be served on the defaulter a notice specifying the nature and the amount of the arrear and the cost of the notice.

(2) Such notice shall be in the form of Schedule XXXI."

It will be recalled that the registered proprietors were in arrears with the quit rent, water rates and education rates.

They were liable to pay quit rent by virtue of section 41 of the Land Enactment. It was not disputed that the quit rent was in arrear. Quit rent is rent.

The proprietors were liable to pay water rates by virtue of section 4 of the Water Supply Enactment No. 103 and education rates by virtue of section 106 of the Education Ordinance 1957.

Water rate is an annual payment which is expressed by sub-section (5) of section 4 of the Water Supply Enactment to be recoverable in the manner prescribed for recovery of land rent. Education rate is also an annual payment which is expressed by sub-section (5) of section 106 of the Education Ordinance 1957 to be recoverable in the manner provided for the recovery of land rent.

Therefore both water and education rates are rent within the meaning of section 150 of the Land Enactment, by virtue of the definition in its sub-section (3).

These rates not having been paid to the Land Officer by the due date, like the quit rent, they became rent arrears.

Notices in the form of Schedule XXXI should be served only in order to recover an arrear other than a rent arrear, see section 151.

As regards argument (b) and (c), which it is convenient to take together, section 152 reads:—

"(1) ....

(2) Upon any rent becoming an arrear the land officer may cause to be served on the defaulter a notice of sale of the land in respect of which the arrear is due.

(3) Such notice of sale shall be in the form of Schedule XXXII.

(4) The date of sale shall be not less than sixty days from the date of service of the notice of sale."

Section 153 reads:—

"(1) The Land Officer shall from time to time issue and post at his office notices of sale in the form of Schedule XXXIII specifying the lands in respect of which arrears are due and notifying that such lands will be sold by auction for the recovery of arrears and costs due thereon at a specified date not less than sixty days from the date of issue of such notice.

(2) Copies of such notice shall be posted at the Land Office and at the house of the penghulu of the Mukim in which the lands referred to therein are situated and may also be published in such other manner as the Land Officer may decide.

(3) .... "

Section 188 says, as already observed, that service of notices under the Enactment may be effected in the manner prescribed by rules.

I have already ruled that service may be effected in the manner provided by paragraph (iv) of rule 42, notwithstanding the death of the registered proprietors.

As already stated, I find that in fact notices in the form of Schedule XXXII were properly served in respect of each land by Jalil, the Land Office notice server, by affixing a copy thereof on each land and by affixing another copy in a conspicuous place on the mosque in the mukim in which the lands were situate.

As regards the notices in the form of Schedule XXXIII, these notices were not required to be served on any persons. They need only to be issued and posted at the Land Office and at the house of the penghulu of the mukim in which the lands are situate.

As already stated, I find that the land officer issued the requisite notice on June 14, 1961, Jalil posted a copy at the Land Office on June 18, 1961 and at the house of the penghulu of the mukim on July 4, 1961. The date of auction (September 16, 1961) specified in the notice was not less than 60 days from the date of both issue and posting.

In any event the words "and post" immediately follow the word "issue" when it first appears in sub-section (1) of section 153 and are altogether absent when the word "issue" appears a second time and from this it would appear that the specified date of auction must be not less than sixty days from the date of the issue of the notice but it may be less than sixty days from the date of its posting.

As regards Che Zahir's further argument, the admitted omission by the land officer to cause service of further notice in the form of Schedule XXXII and XXXIII notifying the dates to which the auction was postponed successively did not in my view constitute a flaw to invalidate the sale.

Section 155 of the Land Enactment provides —

"Except as hereinafter provided all lands so specified shall at the place and on the date notified be put up to public auction in the presence of the Land Officer and shall be sold to the highest bidder; provided that the Land Officer may continue the sale on the following days, or may postpone the sale if he sees sufficient reason for so doing. Particulars of the sale shall be recorded in a book to be called the 'Arrears of Land Revenue Auction Sales Book'."

The above provision clearly confers on the land officer a discretion to postpone a sale if he sees sufficient reason for so doing. I see nothing in it nor elsewhere in the law which requires him to issue fresh notices announcing the new dates. Here the new dates were in fact announced in public by the Land Office bailiff each time the auction was postponed.

The Kedah Enactment section 155 may be contrasted with sub-section (ii) of section 207 of the F.M.S. Land Code which reads —

"The Collector may if he sees fit postpone any sale advertised under section 205 and may in his discretion notify the date, time and place of any postponed sale in such manner as may to him seem fit."

Our Enactment is totally silent as regards notification of the postponed sale.

This sale not having been made contrary to the provisions of the Land Enactment, the plaintiffs' claim is dismissed, the plaintiffs to pay each defendant's costs.

Before departing from this case I would like to make four observations.

First, I would like to record my finding as to the result of the Land Office action in trying to bring the threatened auction to the knowledge of the plaintiffs. The first plaintiff, whose father had a share in both lands, admitted having received two notices from Jalil, one on 5th and another on 12th July 1961. They must have been the notices in the form of Schedule XXXII. He said that he informed other beneficiaries of the threatened auction but not its date. I believe that the third plaintiff, whose father Haji Ahmad also known as Haji Mohamed had a registered share in both lands, paid the first plaintiff his contribution towards the dues and the first plaintiff tried to raise the rest of the money and he either did not raise enough or he spent what he had raised. Be that as it may, he was unable to pay the dues and went to the Land Office to persuade them to give him time. In his pleadings he said he went to the Land Office on September 16, 1961, but in his evidence he changed it to September 10, 1961 and said that on the latter date he was informed by a Land Office clerk that the auction would not be held at all in 1961. But I prefer the evidence of Wan

Bain, the land officer, who said that the auction fixed for September 16, 1961 was that day postponed because there were no bids and that the first plaintiff came to see him only after that date, when in asking for more time he said that he was unable to pay because he had made use of the money.

The evidence as to the actual knowledge of the final date of the auction (December 4, 1961) was conflicting among the plaintiffs concerned and it is difficult to make a definite finding. The second plaintiff, whose father had a registered share in the first land, said that he heard in July of the impending auction, he did not know and (*sic!*) he knew in advance of the auction fixed for December 4, 1961, but he did not go to the Land Office to pay the arrears as he had deputed the first plaintiff to go and ask for time. I believe from the way he gave evidence that it was common knowledge in the kampong that the lands were to be auctioned on December 4, 1961 and this witness knew it too.

The third plaintiff admitted having received through Abu Bakar bin Awang a letter from the Land Office and that the first plaintiff read out its contents to him and its purport was that the lands were to be auctioned. He paid his share of the dues to the first plaintiff and was later surprised to hear that the lands had been auctioned.

The 4th plaintiff, whose father had a share in the second land, denied all knowledge of the auction, notwithstanding that the first plaintiff had told the court that on receipt of the notices he informed all the beneficiaries.

I believe that the contents of the notice in the form of Schedule XXXII came to the knowledge of all the four plaintiffs, they delayed in raising the money to pay the arrears because there were many cousins who should pay their share and few were forthcoming with his or her share, and because in the past they had delayed in paying rent arrears without losing the lands, they thought that they could be lax in 1961 also. I believe that as a result of Land Office action it was common knowledge in their kampong that the lands were finally to be sold on December 4, 1961.

Secondly, the learned Legal Adviser submits that even if the necessary notices under sections 152 and 153 in the forms of Schedule XXXII and XXXIII had not been served, issued and posted, then by virtue of sub-section (3) of section 153 which reads —

> "Notwithstanding anything contained in this Chapter or in any other written law whatsoever, no failure to serve or irregularity in serving any notice of sale shall invalidate any sale held under the provisions of this Chapter or give rise to any cause of action against the Government or any officer thereof by reason of such failure or irregularity."

the plaintiffs should not succeed. In view of my findings on fact it is unnecessary for me to decide on the effect of this provision. Suffice it to say that (a) at the time of the decision of the F.M.S. Court of Appeal in *Tham Hing Kwai* v. *State of Negri Sembilan & 3 Ors.*[2] (to the effect that forced sales of land for rent arrears must strictly comply with the statutory conditions regarding the service of notices), the corresponding provision in the F.M.S. Land Code, sub-section (iii) of section 204, had not been enacted and it would appear that that decision is no longer law, in so far as failure to serve or irregularity in serving any notice of sale is concerned. That sub-section was added to the Code by F.M.S. Enactment No. 12 of 1933 which came into force on 25th May 1933. (b) If sub-section (3) of section 153 means what it says, the aggrieved proprietors' remedy would appear to be administrative and political. (c) The Kedah provision, added by Kedah Enactment No. 2 of 1373 which came into force on 1st May, 1954, appears to apply only to the failure to serve or irregularity in serving any notice of sale in the form of Schedule XXXII. It does not use the words "issue" or "post" and does not therefore seem to apply to the failure to comply with section 153, under which notices of sale in the form of Schedule XXXIII are only to be issued and posted.

Thirdly, both the Government and the successful bidder plead limitation.

Sub-section (2) of section 164 of the Land Enactment provides —

> "No suit for annulment of a sale under this Part shall be brought in any Court after the expiration of three months from the date of the registration of the transfer under section 161."

Che Puteh paid the purchase money by the due date, the land officer signed the necessary memoranda of transfers to him and caused the same to be registered under section 161(1) on December 23, 1961. This suit was not brought until August 12, 1962, that is, after the expiration of three months from the date of the registration of the transfers under section 161. It is accordingly argued that the plaintiffs' claim is statute barred. The plaintiffs retort that in fact on March 6, 1962, that is before the expiration of three months from the date of registration of the transfers under section 161, they filed a Notice of Motion, though against the second defendant alone, asking that the sales be declared null and void, and that on May 26, 1962 the court dismissed the Motion on procedural grounds "without prejudice to the applicants filing a proper action in court." In view of my finding of fact it is unnecessary for me to express an opinion on this submission of law.

Fourthly, Land Rule No. 59 requires the land officer to "so arrange the time and manner of holding such auction as will, in his opinion, be most likely to realise the greatest net value for

the land sold." The notice in the form of Schedule XXXIII used to notify and advertise this auction was less than foolscap in size, it was printed and typed in very small print and in Jawi and the upset price fixed must have been very modest. Che Zahir has not pleaded breach of this Rule as a ground for invalidating the sale, but it would seem to me that better administrative arrangements could and should be made to prevent valuable lands going for a song, though I say this fully realising the importance to the State of Kedah of expeditious and cheap ways of collecting land revenue. Had a realistic price been obtained for these lands, most probably the plaintiffs would have had no cause for complaint.

Claim dismissed.

Solicitors: *Jayadewa & Zahir; M. Abraham.*

WOK v. FATIMAH

[O.C.J. (Hashim J.) August 7, 1963]

[Kota Bharu — Civil Suit No. 13 of 1961]

Land Laws—Possessory title—Land officer issuing to defendant—Plaintiff's appeal to District Officer and to High Court refused—Plaintiff commencing fresh suit in High Court—Whether plea of res judicata available—Kelantan Land Settlement Ordinance, 1955, ss. 5, 10.

On February 22, 1960 the land officer held an inquiry in respect of the land in question under section 5 of the Kelantan Land Settlement Ordinance, 1955 and gave a possessory title to the defendant. The plaintiff appealed to the District Officer (who dismissed the appeal on May 1, 1960) and subsequently to the High Court which dismissed her appeal on January 14, 1961. The plaintiff then filed the present suit on April 26, 1961. The defence raised the plea of *res judicata* as a preliminary issue.

Held: all that a land officer can do under the Kelantan Land Settlement Ordinance, 1955 is to give a possessory title to the person who is found in possession of the land at the time of the inquiry. This possessory title becomes absolute after the expiration of 3 years from the date of such registration under section 10 of the said Ordinance. As these proceedings were filed well within the period of 3 years the plea of *res judicata* fails.

CIVIL SUIT.

H. L. Wrigglesworth for the plaintiff.

Hashim bin Abdul Hamid for the defendant.

Hashim J.: In this case a preliminary issue has been raised by a plea of *res judicata* by the defence.

The following facts are admitted and not denied:—

(a) On 22nd February 1960 the land officer held an inquiry in respect of Lot 456 Mukim Bechah Palas, Bunut Susu under section 5 of the Kelantan Land Settlement Ordinance, 1955. He gave a possessory title to Che Fatimah binti Awang the defendant in this case.

(b) Wok binti Mat Diah, the plaintiff in this case appealed to the District Officer who dismissed the appeal on 1st May 1960.

(c) Wok again appealed to the High Court which dismissed her appeal on 14th January 1961.

(d) Wok then filed this present suit on 26th April 1961.

The defence is that as Wok's appeal has been dismissed by the High Court she is precluded from bringing in this suit. My interpretation of this Ordinance is that all the land officer can do is to give a possessory title to the person who is found in possession of the land at the time of the inquiry. This possessory title becomes absolute after the expiration of three years from the date of such registration under section 10 of the Ordinance. As these proceedings were filed well within the period of three years I am of the opinion that the plea of *res judicata* fails. The Assistant Registrar, Supreme Court, will now fix a date for the resumed hearing of this case.

Order accordingly.

ABDULLAH v. GLADWIN

[O.C.J. (Winslow J.) August 26, 1963]

[Singapore — Suit No. of 1962]

Damages—Road accident—Personal injury—Brain—Anaesthesia of right side of body—Possibility of injury to spinal cord or brain—Mental stress brought about by litigation—Lack of potency—Change in personality—Possibility of loss of job.

The plaintiff aged 33 years and employed in the Police Force at a salary of $175.00 per month was injured in a road accident. He sustained injuries including a haematoma of the left parietal region of the head. He had internal pains on the right side of the body which had become externally numb. The medical evidence confirmed that (i) the anaesthesia on his right side was due to hysterical or self induced hypnotic state (with probably a slight organic base); (ii) either the spinal cord or the brain had been affected and that there was undoubted brain injury; (iii) stress of litigation had caused severe anxiety neurosis which had retarded his mental faculties; (iv) the plaintiff's personality had not been any better even before the accident; (v) although the plaintiff's condition would improve to a certain extent it was a matter for speculation whether he would improve to any great extent; (vi) that the plaintiff's lack of sexual vigour was due more to mental than to physical causes which may or may not be related to the accident. It was also disclosed in evidence that the Police authorities had been charitable in keeping him in the Police Force after the accident.

Held: although the plaintiff had sustained some injury to his brain or spinal cord there was little evidence of any marked change of personality or loss of earnings as the plaintiff was still employed by the Police Force and was in receipt of his usual salary. General damages assessed at $12,000.

Observations on award of heavy damages in English cases on brain injury or anxiety neurosis.

Cases referred to:—

(1) *Jenkins* v. *Greenwood* (1953) 1 Kemp & Kemp 2nd Edn. 200.

(2) *Thomas* v. *Wells* (1957) 1 Kemp & Kemp 2nd Edn. 210.

(3) *Slipman* v. *London Transport Executive* (1951) 1 Kemp & Kemp 2nd Edn. 672.